

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

LAKE FOREST PARTNERS, L.P., and MARY ANASTASIA LAPIC, for themselves and all others similarly situated,

Plaintiffs,

vs.

SPRINT COMMUNICATIONS COMPANY L.P., QWEST COMMUNICATIONS COMPANY, LLC, LEVEL 3 COMMUNICATIONS, LLC, and WILTEL COMMUNICATIONS, LLC,

Defendants.

Civil Action No. 2:12-cv-00999-AJS

Electronically Filed

**CONSENT MOTION FOR ORDER AUTHORIZING
DISBURSEMENT OF FEE-AND-EXPENSE AWARD FROM ESCROW**

Under the terms of the Pennsylvania Class Settlement Agreement and the Court's Findings of Fact and Conclusions of Law on Plaintiffs' Motion for Award of Attorneys' Fees and Expenses to Settlement Class Counsel (Doc. 42), the Settling Defendants have deposited into an escrow account established with U.S. Bank in New York the attorneys' fees and expenses that the Court awarded in this class-action settlement. The agreement governing the escrow account — formally, the Pennsylvania Fiber Optic Counsel Qualified Settlement Fund — requires a Court order before the fund administrator may disburse the fee-and-expense award to counsel. Accordingly, Settlement Class Counsel, with the Settling Defendants' consent, now move for an order authorizing the distribution of the fee-and-expense award from escrow, in specified percentages, to each group of counsel that is to share in the award.

The resolution of the fee-allocation issue among all interested counsel and their agreed percentages are memorialized in two documents: (1) a July 6, 2012 Agreement to Arbitrate the

Allocation of Attorneys' Fees and Costs Awarded in the Fiber-Optic-Cable Right-of-Way Litigation ("Agreement to Arbitrate") and (2) an arbitration award under the Agreement to Arbitrate. Those two documents are attached as Exhibits 1 and 2. Under the Agreement to Arbitrate and the subsequent arbitration award, the Pennsylvania fee-and-expense award is to be disbursed from escrow in the following percentages to the following groups of counsel:

- (1) 85.956 percent to the 48-Firm Group;¹
- (2) 8.398 percent to William T. Gotfryd;²
- (3) 4.446 percent to the Susman Group;³ and
- (4) 1.2 percent to the Litman Group.⁴

¹ "The 48-Firm Group" means (1) the attorneys and law firms listed under "The 48-Firm Group" in Schedule A of the Agreement to Arbitrate, all of whom have, through separate agreements, agreed on the allocation of their collective share of Gross Fees between and among themselves and (2) any other counsel who requests an award of the Gross Fees based on representation of a client who is also represented by the 48-Firm Group and which counsel is not William T. Gotfryd, a member of the Litman Group, a member of the Susman Group, or a representative of the Estate of Hugh V. Smith, Jr, as defined in the Agreement to Arbitrate.

² "William T. Gotfryd" means William T. Gotfryd, Esq. and any other counsel who requests an award of the Gross Fees based on representation of a client who is also represented by William T. Gotfryd and which counsel is not a member of the Litman Group, a member of the 48-Firm Group, a member of the Susman Group, or a representative of the Estate of Hugh V. Smith, Jr, as defined in the Agreement to Arbitrate.

³ "The Susman Group" means Arthur Susman, Esq.; Susman Heffner & Hurst, LLP; Charles Watkins, Esq.; John Wylie, Esq.; Donaldson & Guin LLC; the attorneys and law firms listed under "The Susman Group" in Schedule A of the Agreement to Arbitrate; and any other counsel who requests an award of the Gross Fees based on representation of a client who is also represented by the Susman Group and which counsel is not a member of the 48-Firm Group, a member of the Litman Group, William T. Gotfryd, or a representative of the Estate of Hugh V. Smith, Jr, as defined in the Agreement to Arbitrate.

⁴ "The Litman Group" means Seth A. Litman and Alembik, Fine & Callner P.A; and any other counsel who requests an award of the Gross Fees based on representation of a client who is also represented by the Litman Group and which counsel is not William T. Gotfryd, a member of the 48-Firm Group, a member of the Susman Group, or a representative of the Estate of Hugh V. Smith Jr., as defined in the Agreement to Arbitrate.

In a parallel proceeding, the U.S. District Court for the Northern District of Illinois found that the Agreement to Arbitrate is binding on all parties to it. *See* Ex. 3.

Subsequently, a dispute arose between William T. Gotfryd and the Susman Group over certain litigation expenses. This ongoing dispute prevents Settlement Class Counsel from moving for the release of the Pennsylvania funds on behalf of the Susman Group. However, the declarations attached as Exhibit 4 from Arthur T. Susman on behalf of the Susman Group, and as Exhibit 5 from Kathleen Kauffman on behalf of all other interested plaintiffs' counsel, confirm that the Susman Group's share of the fee-and-expense award is 4.446 percent. We understand that the Susman Group will file its own motion for release of its 4.446-percent share. Settlement Class Counsel will not object to such a motion and, as reflected in the declaration, the Susman Group has no objection to the allocations and disbursement requested herein.

Accordingly, Settlement Class Counsel respectfully request that the Court issue an allocation-and-disbursement order pursuant to the Agreement to Arbitrate and the arbitration award. Under the terms of the proposed order, after deducting all current expenses for administering the Pennsylvania Fiber Optic Counsel Qualified Settlement Fund and adding any accumulated interest, the fund administrator will be authorized to release funds to the 48-Firm Group,⁵ William T. Gotfryd, and the Litman Group in the percentages set forth above.⁶ The remaining funds allocable to the Susman Group under the Agreement to Arbitrate will remain in escrow until the Susman Group moves for the release of its 4.446-percent share. Finally, under the proposed order all expenses for administering the Pennsylvania Fiber Optic Counsel

⁵ Funds allocated to the 48-Firm Group are distributed to the trust account of the Zelle firm, which then makes a further distribution to other members of the 48-Firm Group according to their separate agreements.

⁶ The disbursement and allocation is requested in terms of percentages, as opposed to a fixed amount based on a percentage, because the balance in the escrow account fluctuates with interest and expenses.

Qualified Settlement Fund that are incurred after the distribution to the 48-Firm Group, William T. Gotfryd, and the Litman Group will be paid for out of the remaining funds held in escrow for the Susman Group.

Dated this 9th day of August, 2013.

Respectfully submitted,

s/Eric E. Caugh

Eric E. Caugh (MN 026703X) (*pro hac vice*)

ZELLE HOFMANN VOELBEL & MASON LLP

500 Washington Avenue South, Suite 4000

Minneapolis, MN 55415

Telephone: (612) 339-2020

Facsimile: (612) 336-9100

E-Mail: ecaugh@zelle.com

and

Mark F. Fischer (PA 69425)

Thomas S. Anderson (PA 91016)

YUKEVICH, MARCHETTI, LIEKAR & ZANGRILLI, P.C.

11 Stanwix Street, Suite 1024

Pittsburgh, PA 15222-1324

Telephone: (412) 261-6777

Facsimile: (412) 261-6789

E-Mail: mfischer@ymlz.com

E-Mail: tanderson@ymlz.com

**Attorneys for Plaintiffs Lake Forest Partners,
L.P. and Mary Anastasia Lapic**

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record. The undersigned hereby further certifies that a copy of the foregoing was transmitted via electronic and/or U.S. mail to the following:

Arthur T. Susman
Susman Heffner & Hurst LLP
30 N. LaSalle Street
Chicago, IL 60602
asusman@shhllp.com

William T. Gotfryd
Susman Heffner & Hurst LLP
30 N. LaSalle Street
Chicago, IL 60602
wtglawproj@aol.com

Seth A. Litman
Thompson Hine LLP
3560 Lenox Road, Suite 1600
Atlanta, GA 30326
seth.litman@thompsonhine.com

s/Eric E. Caugh

Eric E. Caugh

Attorney for Plaintiffs Lake Forest Partners, L.P.
and Mary Anastasia Lopic